

AMENDED IN ASSEMBLY AUGUST 14, 2006

AMENDED IN ASSEMBLY JUNE 26, 2006

AMENDED IN SENATE MARCH 29, 2006

SENATE BILL

No. 1667

Introduced by Senator Kuehl

February 24, 2006

An act to amend Sections 295 and 366.21 of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

SB 1667, as amended, Kuehl. Dependent children.

Existing law authorizes the juvenile court to adjudge a minor who has been abused or neglected, or who meets other specified criteria, to be a dependent child of the court. Existing law requires a social worker or probation officer to give notice of review hearings relating to the adoption or legal guardianship of the minor to specified persons. Among others, the social worker or probation officer is required to give notice to the foster parents, Indian custodian, relative caregivers, community care facilitator or foster family agency having physical custody of the child, if a child is removed from the physical custody of the parents or legal guardian.

This bill would authorize any foster parent, Indian custodian, relative caregiver, community care facilitator, or foster family agency who is notified, as described above, to attend all hearings and to submit any information he or she deems relevant to the court in writing.

Existing law specifies the procedure for conducting hearings to determine the status of a dependent child of the juvenile court,

including notice requirements and report filing deadlines. Existing law requires a social worker, in specific circumstances, to file a summary of his or her recommendations with the juvenile court at least 10 days prior to the hearing. Existing law further requires a social worker, at least 10 days prior to a status hearing, to file a summary of his or her recommendations for disposition to a child's foster parents, relative caregivers, or foster parents approved for adoption, if the child is removed from the physical custody of his or her parent prior to the hearing.

This bill also would require a social worker to include with his or her summary of recommendations a copy of the Judicial Council Caregiver Information Form, in the caregiver's primary language when available, along with instructions on how to file the form with the court. By requiring social workers to perform additional duties, this bill would impose a state-mandated local program.

Existing law authorizes a foster parent, relative caregiver, or certified foster parent, as defined, prior to any hearing involving a child over whom he or she has custody, to file with the juvenile court a report containing his or her recommendation for disposition.

This bill would authorize a foster parent, relative caregiver, or certified foster parent, in the alternative, to use a Judicial Council Caregiver Information Form containing his or her recommendation.

This bill would incorporate additional changes in Section 295 of the Welfare and Institutions Code proposed by SB 678 to become operative only if this bill and SB 678 are enacted and become operative on or before January 1, 2007, and this bill is enacted last, in which case Section 295 of the Welfare and Institutions Code as amended by SB 678, shall remain operative only until the operative date of this bill.

This bill would incorporate additional changes to Section 366.21 of the Welfare and Institutions Code proposed by AB 1774 to become operative only if this bill and AB 1774 are enacted and become effective on or before January 1, 2007, and this bill is enacted last, in which case Section 366.21 of the Welfare and Institutions Code as amended by AB 1774, shall remain operative only until the operative date of this bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 295 of the Welfare and Institutions
2 Code is amended to read:
3 295. The social worker or probation officer shall give notice
4 of review hearings held pursuant to Section 366.3 in the
5 following manner:
6 (a) Notice of the hearing shall be given to the following
7 persons:
8 (1) The mother.
9 (2) The presumed father.
10 (3) The legal guardian or guardians.
11 (4) The child, if the child is 10 years of age or older.
12 (5) Any known sibling of the child who is the subject of the
13 hearing if that sibling either is the subject of a dependency
14 proceeding or has been adjudged to be a dependent child of the
15 juvenile court. If the sibling is 10 years of age or older, the
16 sibling, the sibling's caregiver, and the sibling's attorney. If the
17 sibling is under 10 years of age, the sibling's caregiver and the
18 sibling's attorney. However, notice is not required to be given to
19 any sibling whose matter is calendared in the same court on the
20 same day.
21 (6) The foster parents, Indian custodian, relative caregivers,
22 community care facility, or foster family agency having physical
23 custody of the child if a child is removed from the physical
24 custody of the parents or legal guardian. The person notified may
25 attend all hearings and may submit any information he or she
26 deems relevant to the court in writing.
27 (7) The attorney of record if that attorney of record was not
28 present at the time that the hearing was set by the court.
29 (8) The alleged father or fathers, but only if the
30 recommendation is to set a new hearing pursuant to Section
31 366.26.

(9) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) The notice of the review hearing shall be served no earlier than 30 days, nor later than 15 days, before the hearing. In the case of an Indian child, if notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) (1) The notice of the review hearing shall contain a statement regarding the nature of the hearing to be held, any recommended change in the custody or status of the child, and any recommendation that the court set a new hearing pursuant to Section 366.26 in order to select a more permanent plan.

(2) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

(e) Service of notice shall be by first-class mail addressed to the last known address of the person to be provided notice. In the case of an Indian child, notice shall be by registered mail, return receipt requested.

(f) If the child is ordered into a permanent plan of legal guardianship, and subsequently a petition to terminate or modify the guardianship is filed, the probation officer or social worker shall serve notice of the petition not less than 15 court days prior to the hearing on all persons listed in subdivision (a) and on the court that established legal guardianship if it is in another county.

SEC. 1.5. Section 295 of the Welfare and Institutions Code is amended to read:

295. The social worker or probation officer shall give notice of review hearings held pursuant to Section 366.3 in the following manner:

(a) Notice of the hearing shall be given to the following persons:

1 (1) The mother.

2 (2) The presumed father.

3 (3) The legal guardian or guardians.

4 (4) The child, if the child is 10 years of age or older.

5 (5) Any known sibling of the child who is the subject of the
6 hearing if that sibling either is the subject of a dependency
7 proceeding or has been adjudged to be a dependent child of the
8 juvenile court. If the sibling is 10 years of age or older, the
9 sibling, the sibling's caregiver, and the sibling's attorney. If the
10 sibling is under 10 years of age, the sibling's caregiver and the
11 sibling's attorney. However, notice is not required to be given to
12 any sibling whose matter is calendared in the same court on the
13 same day.

14 (6) The foster parents, ~~Indian custodian~~, relative caregivers,
15 community care facility, or foster family agency having physical
16 custody of the child ~~in the case of~~ *if* a child is removed from the
17 physical custody of the parents or legal guardian. *The person*
18 *notified may attend all hearings and may submit any information*
19 *he or she deems relevant to the court in writing.*

20 (7) The attorney of record if that attorney of record was not
21 present at the time that the hearing was set by the court.

22 (8) The alleged father or fathers, but only if the
23 recommendation is to set a new hearing pursuant to Section
24 366.26.

25 ~~(9) If the court knows or has reason to know that an Indian~~
26 ~~child is involved, then to the Indian custodian and the tribe of~~
27 ~~that child. If the identity or location of the parent or Indian~~
28 ~~custodian and the tribe cannot be determined, notice shall be~~
29 ~~given to the Bureau of Indian Affairs.~~

30 (b) No notice is required for a parent whose parental rights
31 have been terminated.

32 (c) The notice of the review hearing shall be served no earlier
33 than 30 days, nor later than 15 days, before the hearing. ~~In the~~
34 ~~case of an Indian child, if notice is given to the Bureau of Indian~~
35 ~~Affairs, the bureau shall have 15 days after receipt to provide the~~
36 ~~requisite notice to the parent or Indian custodian and the tribe.~~

37 (d) ~~(1)~~ The notice of the review hearing shall contain a
38 statement regarding the nature of the hearing to be held, any
39 recommended change in the custody or status of the child, and

1 any recommendation that the court set a new hearing pursuant to
2 Section 366.26 in order to select a more permanent plan.

3 ~~(2) In the case of an Indian child, the notice shall contain a~~
4 ~~statement that the parent or Indian custodian and the tribe have a~~
5 ~~right to intervene at any point in the proceedings. The notice~~
6 ~~shall also include a statement that the parent or Indian custodian~~
7 ~~and the tribe shall, upon request, be granted up to 20 additional~~
8 ~~days to prepare for the proceedings.~~

9 (e) Service of notice shall be by first-class mail addressed to
10 the last known address of the person to be provided notice. In the
11 case of an Indian child, notice shall be by registered mail, return
12 receipt requested.

13 (f) If the child is ordered into a permanent plan of legal
14 guardianship, and subsequently a petition to terminate or modify
15 the guardianship is filed, the probation officer or social worker
16 shall serve notice of the petition not less than 15 court days prior
17 to the hearing on all persons listed in subdivision (a) and on the
18 court that established legal guardianship if it is in another county.

19 *(g) If the social worker or probation officer knows or has*
20 *reason to know that an Indian child is involved, notice shall be*
21 *given in accordance with Section 224.2.*

22 SEC. 2. ~~Section 366.21 of the Welfare and Institutions Code~~
23 ~~is amended to read:~~

24 ~~366.21. (a) Every hearing conducted by the juvenile court~~
25 ~~reviewing the status of a dependent child shall be placed on the~~
26 ~~appearance calendar. The court shall advise all persons present at~~
27 ~~the hearing of the date of the future hearing and of their right to~~
28 ~~be present and represented by counsel.~~

29 ~~(b) Except as provided in Sections 294 and 295, notice of the~~
30 ~~hearing shall be provided pursuant to Section 293.~~

31 ~~(c) At least 10 calendar days prior to the hearing, the social~~
32 ~~worker shall file a supplemental report with the court regarding~~
33 ~~the services provided or offered to the parent or legal guardian to~~
34 ~~enable him or her to assume custody and the efforts made to~~
35 ~~achieve legal permanence for the child if efforts to reunify fail,~~
36 ~~including, but not limited to, efforts to maintain relationships~~
37 ~~between a child who is 10 years of age or older and has been in~~
38 ~~out-of-home placement for six months or longer and individuals~~
39 ~~who are important to the child, consistent with the child's best~~
40 ~~interests; the progress made; and, where relevant, the prognosis~~

1 for return of the child to the physical custody of his or her parent
2 or legal guardian; and shall make his or her recommendation for
3 disposition. If the child is a member of a sibling group described
4 in paragraph (3) of subdivision (a) of Section 361.5, the report
5 and recommendation may also take into account those factors
6 described in subdivision (e) relating to the child's sibling group.
7 If the recommendation is not to return the child to a parent or
8 legal guardian, the report shall specify why the return of the child
9 would be detrimental to the child. The social worker shall
10 provide the parent or legal guardian, counsel for the child, and
11 any court-appointed child advocate with a copy of the report,
12 including his or her recommendation for disposition, at least 10
13 calendar days prior to the hearing. In the case of a child removed
14 from the physical custody of his or her parent or legal guardian,
15 the social worker shall, at least 10 calendar days prior to the
16 hearing, provide a summary of his or her recommendation for
17 disposition to any foster parents, relative caregivers, and certified
18 foster parents who have been approved for adoption by the State
19 Department of Social Services when it is acting as an adoption
20 agency in counties that are not served by a county adoption
21 agency or by a licensed county adoption agency, community care
22 facility, or foster family agency having the physical custody of
23 the child. The social worker shall include a copy of the Judicial
24 Council Caregiver Information Form (JV-290) with the summary
25 of recommendations to the child's foster parents, relative
26 caregivers, or foster parents approved for adoption, in the
27 caregiver's primary language when available, along with
28 information on how to file the form with the court.

29 (d) Prior to any hearing involving a child in the physical
30 custody of a community care facility or a foster family agency
31 that may result in the return of the child to the physical custody
32 of his or her parent or legal guardian, or in adoption or the
33 creation of a legal guardianship, the facility or agency shall file
34 with the court a report containing its recommendation for
35 disposition. Prior to the hearing involving a child in the physical
36 custody of a foster parent, a relative caregiver, or a certified
37 foster parent who has been approved for adoption by the State
38 Department of Social Services when it is acting as an adoption
39 agency or by a licensed adoption agency, the foster parent,
40 relative caregiver, or the certified foster parent who has been

1 approved for adoption by the State Department of Social Services
2 when it is acting as an adoption agency in counties that are not
3 served by a county adoption agency or by a licensed county
4 adoption agency, may file with the court a report, or a Judicial
5 Council Caregiver Information Form (JV-290), containing his or
6 her recommendation for disposition. The court shall consider the
7 report and recommendation filed pursuant to this subdivision
8 prior to determining any disposition.

9 ~~(e) At the review hearing held six months after the initial~~
10 ~~dispositional hearing, the court shall order the return of the child~~
11 ~~to the physical custody of his or her parent or legal guardian~~
12 ~~unless the court finds, by a preponderance of the evidence, that~~
13 ~~the return of the child to his or her parent or legal guardian would~~
14 ~~create a substantial risk of detriment to the safety, protection, or~~
15 ~~physical or emotional well-being of the child. The social worker~~
16 ~~shall have the burden of establishing that detriment. The failure~~
17 ~~of the parent or legal guardian to participate regularly and make~~
18 ~~substantive progress in court-ordered treatment programs shall be~~
19 ~~prima facie evidence that return would be detrimental. In making~~
20 ~~its determination, the court shall review and consider the social~~
21 ~~worker's report and recommendations and the report and~~
22 ~~recommendations of any child advocate appointed pursuant to~~
23 ~~Section 356.5; and shall consider the efforts or progress, or both,~~
24 ~~demonstrated by the parent or legal guardian and the extent to~~
25 ~~which he or she availed himself or herself to services provided.~~

26 ~~Whether or not the child is returned to a parent or legal~~
27 ~~guardian, the court shall specify the factual basis for its~~
28 ~~conclusion that the return would be detrimental or would not be~~
29 ~~detrimental. The court also shall make appropriate findings~~
30 ~~pursuant to subdivision (a) of Section 366; and, where relevant,~~
31 ~~shall order any additional services reasonably believed to~~
32 ~~facilitate the return of the child to the custody of his or her parent~~
33 ~~or legal guardian. The court shall also inform the parent or legal~~
34 ~~guardian that if the child cannot be returned home by the~~
35 ~~12-month permanency hearing, a proceeding pursuant to Section~~
36 ~~366.26 may be instituted. This section does not apply in a case~~
37 ~~where, pursuant to Section 361.5, the court has ordered that~~
38 ~~reunification services shall not be provided.~~

39 ~~If the child was under the age of three years on the date of the~~
40 ~~initial removal, or is a member of a sibling group described in~~

1 paragraph (3) of subdivision (a) of Section 361.5, and the court
2 finds by clear and convincing evidence that the parent failed to
3 participate regularly and make substantive progress in a
4 court-ordered treatment plan, the court may schedule a hearing
5 pursuant to Section 366.26 within 120 days. If, however, the
6 court finds there is a substantial probability that the child, who
7 was under the age of three years on the date of initial removal or
8 is a member of a sibling group described in paragraph (3) of
9 subdivision (a) of Section 361.5, may be returned to his or her
10 parent or legal guardian within six months or that reasonable
11 services have not been provided, the court shall continue the case
12 to the 12-month permanency hearing.

13 For the purpose of placing and maintaining a sibling group
14 together in a permanent home, the court, in making its
15 determination to schedule a hearing pursuant to Section 366.26
16 for some or all members of a sibling group, as described in
17 paragraph (3) of subdivision (a) of Section 361.5, shall review
18 and consider the social worker's report and recommendations.
19 Factors the report shall address, and the court shall consider, may
20 include, but need not be limited to, whether the sibling group was
21 removed from parental care as a group, the closeness and
22 strength of the sibling bond, the ages of the siblings, the
23 appropriateness of maintaining the sibling group together, the
24 detriment to the child if sibling ties are not maintained, the
25 likelihood of finding a permanent home for the sibling group,
26 whether the sibling group is currently placed together in a
27 preadoptive home or has a concurrent plan goal of legal
28 permanency in the same home, the wishes of each child whose
29 age and physical and emotional condition permits a meaningful
30 response, and the best interest of each child in the sibling group.
31 The court shall specify the factual basis for its finding that it is in
32 the best interest of each child to schedule a hearing pursuant to
33 Section 366.26 in 120 days for some or all of the members of the
34 sibling group.

35 If the child was removed initially under subdivision (g) of
36 Section 300 and the court finds by clear and convincing evidence
37 that the whereabouts of the parent are still unknown, or the
38 parent has failed to contact and visit the child, the court may
39 schedule a hearing pursuant to Section 366.26 within 120 days. If
40 the court finds by clear and convincing evidence that the parent

1 has been convicted of a felony indicating parental unfitness, the
2 court may schedule a hearing pursuant to Section 366.26 within
3 120 days.

4 If the child had been placed under court supervision with a
5 previously noncustodial parent pursuant to Section 361.2, the
6 court shall determine whether supervision is still necessary. The
7 court may terminate supervision and transfer permanent custody
8 to that parent, as provided for by paragraph (1) of subdivision (b)
9 of Section 361.2.

10 In all other cases, the court shall direct that any reunification
11 services previously ordered shall continue to be offered to the
12 parent or legal guardian pursuant to the time periods set forth in
13 subdivision (a) of Section 361.5, provided that the court may
14 modify the terms and conditions of those services.

15 If the child is not returned to his or her parent or legal
16 guardian, the court shall determine whether reasonable services
17 that were designed to aid the parent or legal guardian in
18 overcoming the problems that led to the initial removal and the
19 continued custody of the child have been provided or offered to
20 the parent or legal guardian. The court shall order that those
21 services be initiated, continued, or terminated.

22 (f) The permanency hearing shall be held no later than 12
23 months after the date the child entered foster care, as that date is
24 determined pursuant to subdivision (a) of Section 361.5. At the
25 permanency hearing, the court shall determine the permanent
26 plan for the child, which shall include a determination of whether
27 the child will be returned to the child's home and, if so, when,
28 within the time limits of subdivision (a) of Section 361.5. The
29 court shall order the return of the child to the physical custody of
30 his or her parent or legal guardian unless the court finds, by a
31 preponderance of the evidence, that the return of the child to his
32 or her parent or legal guardian would create a substantial risk of
33 detriment to the safety, protection, or physical or emotional
34 well-being of the child. The social worker shall have the burden
35 of establishing that detriment. The court shall also determine
36 whether reasonable services that were designed to aid the parent
37 or legal guardian to overcome the problems that led to the initial
38 removal and continued custody of the child have been provided
39 or offered to the parent or legal guardian. For each youth 16
40 years of age and older, the court shall also determine whether

1 services have been made available to assist him or her in making
2 the transition from foster care to independent living. The failure
3 of the parent or legal guardian to participate regularly and make
4 substantive progress in court-ordered treatment programs shall be
5 prima facie evidence that return would be detrimental. In making
6 its determination, the court shall review and consider the social
7 worker's report and recommendations and the report and
8 recommendations of any child advocate appointed pursuant to
9 Section 356.5, shall consider the efforts or progress, or both,
10 demonstrated by the parent or legal guardian and the extent to
11 which he or she availed himself or herself of services provided,
12 and shall make appropriate findings pursuant to subdivision (a)
13 of Section 366.

14 Whether or not the child is returned to his or her parent or legal
15 guardian, the court shall specify the factual basis for its decision.
16 If the child is not returned to a parent or legal guardian, the court
17 shall specify the factual basis for its conclusion that the return
18 would be detrimental. The court also shall make a finding
19 pursuant to subdivision (a) of Section 366.

20 (g) If the time period in which the court-ordered services were
21 provided has met or exceeded the time period set forth in
22 paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as
23 appropriate, and a child is not returned to the custody of a parent
24 or legal guardian at the permanency hearing held pursuant to
25 subdivision (f), the court shall do one of the following:

26 (1) Continue the case for up to six months for a permanency
27 review hearing, provided that the hearing shall occur within 18
28 months of the date the child was originally taken from the
29 physical custody of his or her parent or legal guardian. The court
30 shall continue the case only if it finds that there is a substantial
31 probability that the child will be returned to the physical custody
32 of his or her parent or legal guardian and safely maintained in the
33 home within the extended period of time or that reasonable
34 services have not been provided to the parent or legal guardian.
35 For the purposes of this section, in order to find a substantial
36 probability that the child will be returned to the physical custody
37 of his or her parent or legal guardian and safely maintained in the
38 home within the extended period of time, the court shall be
39 required to find all of the following:

1 ~~(A) That the parent or legal guardian has consistently and~~
2 ~~regularly contacted and visited with the child.~~

3 ~~(B) That the parent or legal guardian has made significant~~
4 ~~progress in resolving problems that led to the child's removal~~
5 ~~from the home.~~

6 ~~(C) The parent or legal guardian has demonstrated the capacity~~
7 ~~and ability both to complete the objectives of his or her treatment~~
8 ~~plan and to provide for the child's safety, protection, physical~~
9 ~~and emotional well-being, and special needs.~~

10 ~~For purposes of this subdivision, the court's decision to~~
11 ~~continue the case based on a finding or substantial probability~~
12 ~~that the child will be returned to the physical custody of his or~~
13 ~~her parent or legal guardian is a compelling reason for~~
14 ~~determining that a hearing held pursuant to Section 366.26 is not~~
15 ~~in the best interests of the child.~~

16 ~~The court shall inform the parent or legal guardian that if the~~
17 ~~child cannot be returned home by the next permanency review~~
18 ~~hearing, a proceeding pursuant to Section 366.26 may be~~
19 ~~instituted. The court may not order that a hearing pursuant to~~
20 ~~Section 366.26 be held unless there is clear and convincing~~
21 ~~evidence that reasonable services have been provided or offered~~
22 ~~to the parent or legal guardian.~~

23 ~~(2) Order that a hearing be held within 120 days, pursuant to~~
24 ~~Section 366.26, but only if the court does not continue the case to~~
25 ~~the permanency planning review hearing and there is clear and~~
26 ~~convincing evidence that reasonable services have been provided~~
27 ~~or offered to the parents or legal guardians.~~

28 ~~(3) Order that the child remain in long-term foster care, but~~
29 ~~only if the court finds by clear and convincing evidence, based~~
30 ~~upon the evidence already presented to it, including a~~
31 ~~recommendation by the State Department of Social Services~~
32 ~~when it is acting as an adoption agency in counties that are not~~
33 ~~served by a county adoption agency or by a licensed county~~
34 ~~adoption agency, that there is a compelling reason for~~
35 ~~determining that a hearing held pursuant to Section 366.26 is not~~
36 ~~in the best interest of the child because the child is not a proper~~
37 ~~subject for adoption and has no one willing to accept legal~~
38 ~~guardianship. For purposes of this section, a recommendation by~~
39 ~~the State Department of Social Services when it is acting as an~~
40 ~~adoption agency in counties that are not served by a county~~

1 ~~adoption agency or by a licensed county adoption agency that~~
2 ~~adoption is not in the best interest of the child shall constitute a~~
3 ~~compelling reason for the court's determination. That~~
4 ~~recommendation shall be based on the present circumstances of~~
5 ~~the child and may not preclude a different recommendation at a~~
6 ~~later date if the child's circumstances change.~~

7 ~~If the court orders that a child who is 10 years of age or older~~
8 ~~remain in long-term foster care, the court shall determine~~
9 ~~whether the agency has made reasonable efforts to maintain the~~
10 ~~child's relationships with individuals other than the child's~~
11 ~~siblings who are important to the child, consistent with the~~
12 ~~child's best interests, and may make any appropriate order to~~
13 ~~ensure that those relationships are maintained.~~

14 ~~(h) In any case in which the court orders that a hearing~~
15 ~~pursuant to Section 366.26 shall be held, it shall also order the~~
16 ~~termination of reunification services to the parent or legal~~
17 ~~guardian. The court shall continue to permit the parent or legal~~
18 ~~guardian to visit the child pending the hearing unless it finds that~~
19 ~~visitation would be detrimental to the child. The court shall make~~
20 ~~any other appropriate orders to enable the child to maintain~~
21 ~~relationships with individuals, other than the child's siblings,~~
22 ~~who are important to the child, consistent with the child's best~~
23 ~~interests.~~

24 ~~(i) Whenever a court orders that a hearing pursuant to Section~~
25 ~~366.26 shall be held, it shall direct the agency supervising the~~
26 ~~child and the licensed county adoption agency, or the State~~
27 ~~Department of Social Services when it is acting as an adoption~~
28 ~~agency in counties that are not served by a county adoption~~
29 ~~agency, to prepare an assessment that shall include:~~

30 ~~(1) Current search efforts for an absent parent or parents or~~
31 ~~legal guardians.~~

32 ~~(2) A review of the amount of and nature of any contact~~
33 ~~between the child and his or her parents or legal guardians and~~
34 ~~other members of his or her extended family since the time of~~
35 ~~placement. Although the extended family of each child shall be~~
36 ~~reviewed on a case-by-case basis, "extended family" for the~~
37 ~~purpose of this paragraph shall include, but not be limited to, the~~
38 ~~child's siblings, grandparents, aunts, and uncles.~~

39 ~~(3) An evaluation of the child's medical, developmental,~~
40 ~~scholastic, mental, and emotional status.~~

~~(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.~~

~~(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.~~

~~(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment and listing on an adoption exchange.~~

~~(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.~~

~~(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.~~

~~(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.~~

~~(l) For purposes of this section, evidence of any of the following circumstances may not, in and of itself, be deemed a failure to provide or offer reasonable services:~~

1 ~~(1) The child has been placed with a foster family that is~~
2 ~~eligible to adopt a child, or has been placed in a preadoptive~~
3 ~~home.~~

4 ~~(2) The case plan includes services to make and finalize a~~
5 ~~permanent placement for the child if efforts to reunify fail.~~

6 ~~(3) Services to make and finalize a permanent placement for~~
7 ~~the child, if efforts to reunify fail, are provided concurrently with~~
8 ~~services to reunify the family.~~

9 ~~(m) The implementation and operation of the amendments to~~
10 ~~subdivisions (c) and (g) enacted at the 2005–06 Regular Session~~
11 ~~shall be subject to appropriation through the budget process and~~
12 ~~by phase, as provided in Section 366.35.~~

13 *SEC. 2. Section 366.21 of the Welfare and Institutions Code*
14 *is amended to read:*

15 366.21. (a) Every hearing conducted by the juvenile court
16 reviewing the status of a dependent child shall be placed on the
17 appearance calendar. The court shall advise all persons present at
18 the hearing of the date of the future hearing and of their right to
19 be present and represented by counsel.

20 (b) Except as provided in Sections 294 and 295, notice of the
21 hearing shall be provided pursuant to Section 293.

22 (c) At least 10 calendar days prior to the hearing, the social
23 worker shall file a supplemental report with the court regarding
24 the services provided or offered to the parent or legal guardian to
25 enable him or her to assume custody and the efforts made to
26 achieve legal permanence for the child if efforts to reunify fail,
27 including, but not limited to, efforts to maintain relationships
28 between a child who is 10 years of age or older and has been in
29 out-of-home placement for six months or longer and individuals
30 who are important to the child, consistent with the child's best
31 interests; the progress made; and, where relevant, the prognosis
32 for return of the child to the physical custody of his or her parent
33 or legal guardian; and shall make his or her recommendation for
34 disposition. If the child is a member of a sibling group described
35 in paragraph (3) of subdivision (a) of Section 361.5, the report
36 and recommendation may also take into account those factors
37 described in subdivision (e) relating to the child's sibling group.
38 If the recommendation is not to return the child to a parent or
39 legal guardian, the report shall specify why the return of the child
40 would be detrimental to the child. The social worker shall

1 provide the parent or legal guardian, counsel for the child, and
2 any court-appointed child advocate with a copy of the report,
3 including his or her recommendation for disposition, at least 10
4 calendar days prior to the hearing. In the case of a child removed
5 from the physical custody of his or her parent or legal guardian,
6 the social worker shall, at least 10 calendar days prior to the
7 hearing, provide a summary of his or her recommendation for
8 disposition to any foster parents, relative caregivers, and certified
9 foster parents who have been approved for adoption by the State
10 Department of Social Services when it is acting as an adoption
11 agency in counties that are not served by a county adoption
12 agency or by a licensed county adoption agency, community care
13 facility, or foster family agency having the physical custody of
14 the child. *The social worker shall include a copy of the Judicial
15 Council Caregiver Information Form (JV-290) with the summary
16 of recommendations to the child's foster parents, relative
17 caregivers, or foster parents approved for adoption, in the
18 caregiver's primary language when available, along with
19 information on how to file the form with the court.*

20 (d) Prior to any hearing involving a child in the physical
21 custody of a community care facility or a foster family agency
22 that may result in the return of the child to the physical custody
23 of his or her parent or legal guardian, or in adoption or the
24 creation of a legal guardianship, the facility or agency shall file
25 with the court a report containing its recommendation for
26 disposition. Prior to the hearing involving a child in the physical
27 custody of a foster parent, a relative caregiver, or a certified
28 foster parent who has been approved for adoption by the State
29 Department of Social Services when it is acting as an adoption
30 agency or by a licensed adoption agency, the foster parent,
31 relative caregiver, or the certified foster parent who has been
32 approved for adoption by the State Department of Social Services
33 when it is acting as an adoption agency in counties that are not
34 served by a county adoption agency or by a licensed county
35 adoption agency, may file with the court a report, *or a Judicial
36 Council Caregiver Information Form (JV-290)*, containing his or
37 her recommendation for disposition. The court shall consider the
38 report and recommendation filed pursuant to this subdivision
39 prior to determining any disposition.

1 (e) At the review hearing held six months after the initial
2 dispositional hearing, the court shall order the return of the child
3 to the physical custody of his or her parent or legal guardian
4 unless the court finds, by a preponderance of the evidence, that
5 the return of the child to his or her parent or legal guardian would
6 create a substantial risk of detriment to the safety, protection, or
7 physical or emotional well-being of the child. The social worker
8 shall have the burden of establishing that detriment. The failure
9 of the parent or legal guardian to participate regularly and make
10 substantive progress in court-ordered treatment programs shall be
11 prima facie evidence that return would be detrimental. In making
12 its determination, the court shall review and consider the social
13 worker's report and recommendations and the report and
14 recommendations of any child advocate appointed pursuant to
15 Section 356.5; and shall consider the efforts or progress, or both,
16 demonstrated by the parent or legal guardian and the extent to
17 which he or she availed himself or herself to services provided.

18 Whether or not the child is returned to a parent or legal
19 guardian, the court shall specify the factual basis for its
20 conclusion that the return would be detrimental or would not be
21 detrimental. The court also shall make appropriate findings
22 pursuant to subdivision (a) of Section 366; and, where relevant,
23 shall order any additional services reasonably believed to
24 facilitate the return of the child to the custody of his or her parent
25 or legal guardian. The court shall also inform the parent or legal
26 guardian that if the child cannot be returned home by the
27 12-month permanency hearing, a proceeding pursuant to Section
28 366.26 may be instituted. This section does not apply in a case
29 where, pursuant to Section 361.5, the court has ordered that
30 reunification services shall not be provided.

31 If the child was under the age of three years on the date of the
32 initial removal, or is a member of a sibling group described in
33 paragraph (3) of subdivision (a) of Section 361.5, and the court
34 finds by clear and convincing evidence that the parent failed to
35 participate regularly and make substantive progress in a
36 court-ordered treatment plan, the court may schedule a hearing
37 pursuant to Section 366.26 within 120 days. If, however, the
38 court finds there is a substantial probability that the child, who
39 was under the age of three years on the date of initial removal or
40 is a member of a sibling group described in paragraph (3) of

1 subdivision (a) of Section 361.5, may be returned to his or her
2 parent or legal guardian within six months or that reasonable
3 services have not been provided, the court shall continue the case
4 to the 12-month permanency hearing.

5 For the purpose of placing and maintaining a sibling group
6 together in a permanent home, the court, in making its
7 determination to schedule a hearing pursuant to Section 366.26
8 for some or all members of a sibling group, as described in
9 paragraph (3) of subdivision (a) of Section 361.5, shall review
10 and consider the social worker's report and recommendations.
11 Factors the report shall address, and the court shall consider, may
12 include, but need not be limited to, whether the sibling group was
13 removed from parental care as a group, the closeness and
14 strength of the sibling bond, the ages of the siblings, the
15 appropriateness of maintaining the sibling group together, the
16 detriment to the child if sibling ties are not maintained, the
17 likelihood of finding a permanent home for the sibling group,
18 whether the sibling group is currently placed together in a
19 preadoptive home or has a concurrent plan goal of legal
20 permanency in the same home, the wishes of each child whose
21 age and physical and emotional condition permits a meaningful
22 response, and the best interest of each child in the sibling group.
23 The court shall specify the factual basis for its finding that it is in
24 the best interest of each child to schedule a hearing pursuant to
25 Section 366.26 in 120 days for some or all of the members of the
26 sibling group.

27 If the child was removed initially under subdivision (g) of
28 Section 300 and the court finds by clear and convincing evidence
29 that the whereabouts of the parent are still unknown, or the
30 parent has failed to contact and visit the child, the court may
31 schedule a hearing pursuant to Section 366.26 within 120 days. If
32 the court finds by clear and convincing evidence that the parent
33 has been convicted of a felony indicating parental unfitness, the
34 court may schedule a hearing pursuant to Section 366.26 within
35 120 days.

36 If the child had been placed under court supervision with a
37 previously noncustodial parent pursuant to Section 361.2, the
38 court shall determine whether supervision is still necessary. The
39 court may terminate supervision and transfer permanent custody

1 to that parent, as provided for by paragraph (1) of subdivision (b)
2 of Section 361.2.

3 In all other cases, the court shall direct that any reunification
4 services previously ordered shall continue to be offered to the
5 parent or legal guardian pursuant to the time periods set forth in
6 subdivision (a) of Section 361.5, provided that the court may
7 modify the terms and conditions of those services.

8 If the child is not returned to his or her parent or legal
9 guardian, the court shall determine whether reasonable services
10 that were designed to aid the parent or legal guardian in
11 overcoming the problems that led to the initial removal and the
12 continued custody of the child have been provided or offered to
13 the parent or legal guardian. The court shall order that those
14 services be initiated, continued, or terminated.

15 (f) The permanency hearing shall be held no later than 12
16 months after the date the child entered foster care, as that date is
17 determined pursuant to subdivision (a) of Section 361.5. At the
18 permanency hearing, the court shall determine the permanent
19 plan for the child, which shall include a determination of whether
20 the child will be returned to the child's home and, if so, when,
21 within the time limits of subdivision (a) of Section 361.5. The
22 court shall order the return of the child to the physical custody of
23 his or her parent or legal guardian unless the court finds, by a
24 preponderance of the evidence, that the return of the child to his
25 or her parent or legal guardian would create a substantial risk of
26 detriment to the safety, protection, or physical or emotional
27 well-being of the child. The social worker shall have the burden
28 of establishing that detriment. The court shall also determine
29 whether reasonable services that were designed to aid the parent
30 or legal guardian to overcome the problems that led to the initial
31 removal and continued custody of the child have been provided
32 or offered to the parent or legal guardian. For each youth 16
33 years of age and older, the court shall also determine whether
34 services have been made available to assist him or her in making
35 the transition from foster care to independent living. The failure
36 of the parent or legal guardian to participate regularly and make
37 substantive progress in court-ordered treatment programs shall be
38 prima facie evidence that return would be detrimental. In making
39 its determination, the court shall review and consider the social
40 worker's report and recommendations and the report and

1 recommendations of any child advocate appointed pursuant to
2 Section 356.5, shall consider the efforts or progress, or both,
3 demonstrated by the parent or legal guardian and the extent to
4 which he or she availed himself or herself of services provided,
5 and shall make appropriate findings pursuant to subdivision (a)
6 of Section 366.

7 Whether or not the child is returned to his or her parent or legal
8 guardian, the court shall specify the factual basis for its decision.
9 If the child is not returned to a parent or legal guardian, the court
10 shall specify the factual basis for its conclusion that the return
11 would be detrimental. The court also shall make a finding
12 pursuant to subdivision (a) of Section 366.

13 (g) If the time period in which the court-ordered services were
14 provided has met or exceeded the time period set forth in
15 paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as
16 appropriate, and a child is not returned to the custody of a parent
17 or legal guardian at the permanency hearing held pursuant to
18 subdivision (f), the court shall do one of the following:

19 (1) Continue the case for up to six months for a permanency
20 review hearing, provided that the hearing shall occur within 18
21 months of the date the child was originally taken from the
22 physical custody of his or her parent or legal guardian. The court
23 shall continue the case only if it finds that there is a substantial
24 probability that the child will be returned to the physical custody
25 of his or her parent or legal guardian and safely maintained in the
26 home within the extended period of time or that reasonable
27 services have not been provided to the parent or legal guardian.
28 For the purposes of this section, in order to find a substantial
29 probability that the child will be returned to the physical custody
30 of his or her parent or legal guardian and safely maintained in the
31 home within the extended period of time, the court shall be
32 required to find all of the following:

33 (A) That the parent or legal guardian has consistently and
34 regularly contacted and visited with the child.

35 (B) That the parent or legal guardian has made significant
36 progress in resolving problems that led to the child's removal
37 from the home.

38 (C) The parent or legal guardian has demonstrated the capacity
39 and ability both to complete the objectives of his or her treatment

1 plan and to provide for the child's safety, protection, physical
2 and emotional well-being, and special needs.

3 For purposes of this subdivision, the court's decision to
4 continue the case based on a finding or substantial probability
5 that the child will be returned to the physical custody of his or
6 her parent or legal guardian is a compelling reason for
7 determining that a hearing held pursuant to Section 366.26 is not
8 in the best interests of the child.

9 The court shall inform the parent or legal guardian that if the
10 child cannot be returned home by the next permanency review
11 hearing, a proceeding pursuant to Section 366.26 may be
12 instituted. The court may not order that a hearing pursuant to
13 Section 366.26 be held unless there is clear and convincing
14 evidence that reasonable services have been provided or offered
15 to the parent or legal guardian.

16 (2) Order that a hearing be held within 120 days, pursuant to
17 Section 366.26, but only if the court does not continue the case to
18 the permanency planning review hearing and there is clear and
19 convincing evidence that reasonable services have been provided
20 or offered to the parents or legal guardians.

21 (3) Order that the child remain in long-term foster care, but
22 only if the court finds by clear and convincing evidence, based
23 upon the evidence already presented to it, including a
24 recommendation by the State Department of Social Services
25 when it is acting as an adoption agency in counties that are not
26 served by a county adoption agency or by a licensed county
27 adoption agency, that there is a compelling reason for
28 determining that a hearing held pursuant to Section 366.26 is not
29 in the best interest of the child because the child is not a proper
30 subject for adoption and has no one willing to accept legal
31 guardianship. For purposes of this section, a recommendation by
32 the State Department of Social Services when it is acting as an
33 adoption agency in counties that are not served by a county
34 adoption agency or by a licensed county adoption agency that
35 adoption is not in the best interest of the child shall constitute a
36 compelling reason for the court's determination. That
37 recommendation shall be based on the present circumstances of
38 the child and may not preclude a different recommendation at a
39 later date if the child's circumstances change.

1 If the court orders that a child who is 10 years of age or older
2 remain in long-term foster care, the court shall determine
3 whether the agency has made reasonable efforts to maintain the
4 child's relationships with individuals other than the child's
5 siblings who are important to the child, consistent with the
6 child's best interests, and may make any appropriate order to
7 ensure that those relationships are maintained.

8 (h) In any case in which the court orders that a hearing
9 pursuant to Section 366.26 shall be held, it shall also order the
10 termination of reunification services to the parent or legal
11 guardian. The court shall continue to permit the parent or legal
12 guardian to visit the child pending the hearing unless it finds that
13 visitation would be detrimental to the child. The court shall make
14 any other appropriate orders to enable the child to maintain
15 relationships with individuals, other than the child's siblings,
16 who are important to the child, consistent with the child's best
17 interests.

18 (i) Whenever a court orders that a hearing pursuant to Section
19 366.26 shall be held, it shall direct the agency supervising the
20 child and the licensed county adoption agency, or the State
21 Department of Social Services when it is acting as an adoption
22 agency in counties that are not served by a county adoption
23 agency, to prepare an assessment that shall include:

24 (1) Current search efforts for an absent parent or parents or
25 legal guardians.

26 (2) A review of the amount of and nature of any contact
27 between the child and his or her parents or legal guardians and
28 other members of his or her extended family since the time of
29 placement. Although the extended family of each child shall be
30 reviewed on a case-by-case basis, "extended family" for the
31 purpose of this paragraph shall include, but not be limited to, the
32 child's siblings, grandparents, aunts, and uncles.

33 (3) An evaluation of the child's medical, developmental,
34 scholastic, mental, and emotional status.

35 (4) A preliminary assessment of the eligibility and
36 commitment of any identified prospective adoptive parent or
37 legal guardian, particularly the caretaker, to include a social
38 history including screening for criminal records and prior
39 referrals for child abuse or neglect, the capability to meet the
40 child's needs, and the understanding of the legal and financial

1 rights and responsibilities of adoption and guardianship. If a
2 proposed guardian is a relative of the minor, and the relative was
3 assessed for foster care placement of the minor prior to January
4 1, 1998, the assessment shall also consider, but need not be
5 limited to, all of the factors specified in subdivision (a) of
6 Section 361.3.

7 (5) The relationship of the child to any identified prospective
8 adoptive parent or legal guardian, the duration and character of
9 the relationship, the motivation for seeking adoption or
10 guardianship, and a statement from the child concerning
11 placement and the adoption or guardianship, unless the child's
12 age or physical, emotional, or other condition precludes his or
13 her meaningful response, and if so, a description of the condition.

14 (6) A description of efforts to be made to identify a
15 prospective adoptive parent or legal guardian, including, but not
16 limited to, child-specific recruitment and listing on an adoption
17 exchange.

18 (7) An analysis of the likelihood that the child will be adopted
19 if parental rights are terminated.

20 (j) If, at any hearing held pursuant to Section 366.26, a
21 guardianship is established for the minor with a relative, and
22 juvenile court dependency is subsequently dismissed, the relative
23 shall be eligible for aid under the Kin-GAP program or the
24 Kin-GAP Plus program, as provided for in Article 4.5
25 (commencing with Section 11360) and Article 4.75
26 (commencing with Section 11380) of Chapter 2 of Part 3 of
27 Division 9.

28 (k) As used in this section, "relative" means an adult who is
29 related to the minor by blood, adoption, or affinity within the
30 fifth degree of kinship, including stepparents, stepsiblings, and
31 all relatives whose status is preceded by the words "great,"
32 "great-great," or "grand," or the spouse of any of those persons
33 even if the marriage was terminated by death or dissolution.

34 (l) For purposes of this section, evidence of any of the
35 following circumstances may not, in and of itself, be deemed a
36 failure to provide or offer reasonable services:

37 (1) The child has been placed with a foster family that is
38 eligible to adopt a child, or has been placed in a preadoptive
39 home.

1 (2) The case plan includes services to make and finalize a
2 permanent placement for the child if efforts to reunify fail.

3 (3) Services to make and finalize a permanent placement for
4 the child, if efforts to reunify fail, are provided concurrently with
5 services to reunify the family.

6 (m) The implementation and operation of the amendments to
7 subdivisions (c) and (g) enacted at the 2005–06 Regular Session
8 shall be subject to appropriation through the budget process and
9 by phase, as provided in Section 366.35.

10 *SEC. 2.5. Section 366.21 of the Welfare and Institutions*
11 *Code, as amended by Section 26 of Chapter 75 of the Statutes of*
12 *2006, is amended to read:*

13 366.21. (a) Every hearing conducted by the juvenile court
14 reviewing the status of a dependent child shall be placed on the
15 appearance calendar. The court shall advise all persons present at
16 the hearing of the date of the future hearing and of their right to
17 be present and represented by counsel.

18 (b) Except as provided in Sections 294 and 295, notice of the
19 hearing shall be provided pursuant to Section 293.

20 (c) At least 10 calendar days prior to the hearing, the social
21 worker shall file a supplemental report with the court regarding
22 the services provided or offered to the parent or legal guardian to
23 enable him or her to assume custody and the efforts made to
24 achieve legal permanence for the child if efforts to reunify fail,
25 including, but not limited to, efforts to maintain relationships
26 between a child who is 10 years of age or older and has been in
27 out-of-home placement for six months or longer and individuals
28 who are important to the child, consistent with the child's best
29 interests; the progress made; and, where relevant, the prognosis
30 for return of the child to the physical custody of his or her parent
31 or legal guardian; and shall make his or her recommendation for
32 disposition. If the child is a member of a sibling group described
33 in paragraph (3) of subdivision (a) of Section 361.5, the report
34 and recommendation may also take into account those factors
35 described in subdivision (e) relating to the child's sibling group.
36 If the recommendation is not to return the child to a parent or
37 legal guardian, the report shall specify why the return of the child
38 would be detrimental to the child. The social worker shall
39 provide the parent or legal guardian, counsel for the child, and
40 any court-appointed child advocate with a copy of the report,

1 including his or her recommendation for disposition, at least 10
2 calendar days prior to the hearing. In the case of a child removed
3 from the physical custody of his or her parent or legal guardian,
4 the social worker shall, at least 10 calendar days prior to the
5 hearing, provide a summary of his or her recommendation for
6 disposition to any foster parents, relative caregivers, and certified
7 foster parents who have been approved for adoption by the State
8 Department of Social Services when it is acting as an adoption
9 agency in counties that are not served by a county adoption
10 agency or by a licensed county adoption agency, community care
11 facility, or foster family agency having the physical custody of
12 the child. *The social worker shall include a copy of the Judicial
13 Council Caregiver Information Form (JV-290) with the summary
14 of recommendations to the child's foster parents, relative
15 caregivers, or foster parents approved for adoption, in the
16 caregiver's primary language when available, along with
17 information on how to file the form with the court.*

18 (d) Prior to any hearing involving a child in the physical
19 custody of a community care facility or a foster family agency
20 that may result in the return of the child to the physical custody
21 of his or her parent or legal guardian, or in adoption or the
22 creation of a legal guardianship, the facility or agency shall file
23 with the court a report, *or a Judicial Council Caregiver
24 Information Form (JV-290)*, containing its recommendation for
25 disposition. Prior to the hearing involving a child in the physical
26 custody of a foster parent, a relative caregiver, or a certified
27 foster parent who has been approved for adoption by the State
28 Department of Social Services when it is acting as an adoption
29 agency or by a licensed adoption agency, the foster parent,
30 relative caregiver, or the certified foster parent who has been
31 approved for adoption by the State Department of Social Services
32 when it is acting as an adoption agency in counties that are not
33 served by a county adoption agency or by a licensed county
34 adoption agency, may file with the court a report containing his
35 or her recommendation for disposition. The court shall consider
36 the report and recommendation filed pursuant to this subdivision
37 prior to determining any disposition.

38 (e) At the review hearing held six months after the initial
39 dispositional hearing, the court shall order the return of the child
40 to the physical custody of his or her parent or legal guardian

1 unless the court finds, by a preponderance of the evidence, that
2 the return of the child to his or her parent or legal guardian would
3 create a substantial risk of detriment to the safety, protection, or
4 physical or emotional well-being of the child. The social worker
5 shall have the burden of establishing that detriment. *At the*
6 *hearing, the court shall consider the criminal history, obtained*
7 *pursuant to paragraph (1) of subdivision (f) of Section 16504.5,*
8 *of the parent or legal guardian subsequent to the child's*
9 *removal, provided that he or she agreed to submit fingerprint*
10 *images to obtain criminal history information as part of the case*
11 *plan.* The failure of the parent or legal guardian to participate
12 regularly and make substantive progress in court-ordered
13 treatment programs shall be prima facie evidence that return
14 would be detrimental. In making its determination, the court shall
15 review and consider the social worker's report and
16 recommendations and the report and recommendations of any
17 child advocate appointed pursuant to Section 356.5; and shall
18 consider the efforts or progress, or both, demonstrated by the
19 parent or legal guardian and the extent to which he or she availed
20 himself or herself to services provided.

21 Whether or not the child is returned to a parent or legal
22 guardian, the court shall specify the factual basis for its
23 conclusion that the return would be detrimental or would not be
24 detrimental. The court also shall make appropriate findings
25 pursuant to subdivision (a) of Section 366; and, where relevant,
26 shall order any additional services reasonably believed to
27 facilitate the return of the child to the custody of his or her parent
28 or legal guardian. The court shall also inform the parent or legal
29 guardian that if the child cannot be returned home by the
30 12-month permanency hearing, a proceeding pursuant to Section
31 366.26 may be instituted. This section does not apply in a case
32 where, pursuant to Section 361.5, the court has ordered that
33 reunification services shall not be provided.

34 If the child was under the age of three years on the date of the
35 initial removal, or is a member of a sibling group described in
36 paragraph (3) of subdivision (a) of Section 361.5, and the court
37 finds by clear and convincing evidence that the parent failed to
38 participate regularly and make substantive progress in a
39 court-ordered treatment plan, the court may schedule a hearing
40 pursuant to Section 366.26 within 120 days. If, however, the

1 court finds there is a substantial probability that the child, who
2 was under the age of three years on the date of initial removal or
3 is a member of a sibling group described in paragraph (3) of
4 subdivision (a) of Section 361.5, may be returned to his or her
5 parent or legal guardian within six months or that reasonable
6 services have not been provided, the court shall continue the case
7 to the 12-month permanency hearing.

8 For the purpose of placing and maintaining a sibling group
9 together in a permanent home, the court, in making its
10 determination to schedule a hearing pursuant to Section 366.26
11 for some or all members of a sibling group, as described in
12 paragraph (3) of subdivision (a) of Section 361.5, shall review
13 and consider the social worker's report and recommendations.
14 Factors the report shall address, and the court shall consider, may
15 include, but need not be limited to, whether the sibling group was
16 removed from parental care as a group, the closeness and
17 strength of the sibling bond, the ages of the siblings, the
18 appropriateness of maintaining the sibling group together, the
19 detriment to the child if sibling ties are not maintained, the
20 likelihood of finding a permanent home for the sibling group,
21 whether the sibling group is currently placed together in a
22 preadoptive home or has a concurrent plan goal of legal
23 permanency in the same home, the wishes of each child whose
24 age and physical and emotional condition permits a meaningful
25 response, and the best interest of each child in the sibling group.
26 The court shall specify the factual basis for its finding that it is in
27 the best interest of each child to schedule a hearing pursuant to
28 Section 366.26 in 120 days for some or all of the members of the
29 sibling group.

30 If the child was removed initially under subdivision (g) of
31 Section 300 and the court finds by clear and convincing evidence
32 that the whereabouts of the parent are still unknown, or the
33 parent has failed to contact and visit the child, the court may
34 schedule a hearing pursuant to Section 366.26 within 120 days. If
35 the court finds by clear and convincing evidence that the parent
36 has been convicted of a felony indicating parental unfitness, the
37 court may schedule a hearing pursuant to Section 366.26 within
38 120 days.

39 If the child had been placed under court supervision with a
40 previously noncustodial parent pursuant to Section 361.2, the

1 court shall determine whether supervision is still necessary. The
2 court may terminate supervision and transfer permanent custody
3 to that parent, as provided for by paragraph (1) of subdivision (b)
4 of Section 361.2.

5 In all other cases, the court shall direct that any reunification
6 services previously ordered shall continue to be offered to the
7 parent or legal guardian pursuant to the time periods set forth in
8 subdivision (a) of Section 361.5, provided that the court may
9 modify the terms and conditions of those services.

10 If the child is not returned to his or her parent or legal
11 guardian, the court shall determine whether reasonable services
12 that were designed to aid the parent or legal guardian in
13 overcoming the problems that led to the initial removal and the
14 continued custody of the child have been provided or offered to
15 the parent or legal guardian. The court shall order that those
16 services be initiated, continued, or terminated.

17 (f) The permanency hearing shall be held no later than 12
18 months after the date the child entered foster care, as that date is
19 determined pursuant to subdivision (a) of Section 361.5. At the
20 permanency hearing, the court shall determine the permanent
21 plan for the child, which shall include a determination of whether
22 the child will be returned to the child's home and, if so, when,
23 within the time limits of subdivision (a) of Section 361.5. The
24 court shall order the return of the child to the physical custody of
25 his or her parent or legal guardian unless the court finds, by a
26 preponderance of the evidence, that the return of the child to his
27 or her parent or legal guardian would create a substantial risk of
28 detriment to the safety, protection, or physical or emotional
29 well-being of the child. The social worker shall have the burden
30 of establishing that detriment. *At the permanency hearing, the*
31 *court shall consider the criminal history, obtained pursuant to*
32 *Section 16504.5, of the parent or legal guardian subsequent to*
33 *the child's removal, provided that he or she agreed to submit*
34 *fingerprint images to obtain criminal history information as part*
35 *of the case plan.* The court shall also determine whether
36 reasonable services that were designed to aid the parent or legal
37 guardian to overcome the problems that led to the initial removal
38 and continued custody of the child have been provided or offered
39 to the parent or legal guardian. For each youth 16 years of age
40 and older, the court shall also determine whether services have

1 been made available to assist him or her in making the transition
2 from foster care to independent living. The failure of the parent
3 or legal guardian to participate regularly and make substantive
4 progress in court-ordered treatment programs shall be prima facie
5 evidence that return would be detrimental. In making its
6 determination, the court shall review and consider the social
7 worker's report and recommendations and the report and
8 recommendations of any child advocate appointed pursuant to
9 Section 356.5, shall consider the efforts or progress, or both,
10 demonstrated by the parent or legal guardian and the extent to
11 which he or she availed himself or herself of services provided,
12 and shall make appropriate findings pursuant to subdivision (a)
13 of Section 366.

14 Whether or not the child is returned to his or her parent or legal
15 guardian, the court shall specify the factual basis for its decision.
16 If the child is not returned to a parent or legal guardian, the court
17 shall specify the factual basis for its conclusion that the return
18 would be detrimental. The court also shall make a finding
19 pursuant to subdivision (a) of Section 366.

20 (g) If the time period in which the court-ordered services were
21 provided has met or exceeded the time period set forth in
22 paragraph (1), (2), or (3) of subdivision (a) of Section 361.5, as
23 appropriate, and a child is not returned to the custody of a parent
24 or legal guardian at the permanency hearing held pursuant to
25 subdivision (f), the court shall do one of the following:

26 (1) Continue the case for up to six months for a permanency
27 review hearing, provided that the hearing shall occur within 18
28 months of the date the child was originally taken from the
29 physical custody of his or her parent or legal guardian. The court
30 shall continue the case only if it finds that there is a substantial
31 probability that the child will be returned to the physical custody
32 of his or her parent or legal guardian and safely maintained in the
33 home within the extended period of time or that reasonable
34 services have not been provided to the parent or legal guardian.
35 For the purposes of this section, in order to find a substantial
36 probability that the child will be returned to the physical custody
37 of his or her parent or legal guardian and safely maintained in the
38 home within the extended period of time, the court shall be
39 required to find all of the following:

1 (A) That the parent or legal guardian has consistently and
2 regularly contacted and visited with the child.

3 (B) That the parent or legal guardian has made significant
4 progress in resolving problems that led to the child's removal
5 from the home.

6 (C) The parent or legal guardian has demonstrated the capacity
7 and ability both to complete the objectives of his or her treatment
8 plan and to provide for the child's safety, protection, physical
9 and emotional well-being, and special needs.

10 For purposes of this subdivision, the court's decision to
11 continue the case based on a finding or substantial probability
12 that the child will be returned to the physical custody of his or
13 her parent or legal guardian is a compelling reason for
14 determining that a hearing held pursuant to Section 366.26 is not
15 in the best interests of the child.

16 The court shall inform the parent or legal guardian that if the
17 child cannot be returned home by the next permanency review
18 hearing, a proceeding pursuant to Section 366.26 may be
19 instituted. The court may not order that a hearing pursuant to
20 Section 366.26 be held unless there is clear and convincing
21 evidence that reasonable services have been provided or offered
22 to the parent or legal guardian.

23 (2) Order that a hearing be held within 120 days, pursuant to
24 Section 366.26, but only if the court does not continue the case to
25 the permanency planning review hearing and there is clear and
26 convincing evidence that reasonable services have been provided
27 or offered to the parents or legal guardians.

28 (3) Order that the child remain in long-term foster care, but
29 only if the court finds by clear and convincing evidence, based
30 upon the evidence already presented to it, including a
31 recommendation by the State Department of Social Services
32 when it is acting as an adoption agency in counties that are not
33 served by a county adoption agency or by a licensed county
34 adoption agency, that there is a compelling reason for
35 determining that a hearing held pursuant to Section 366.26 is not
36 in the best interest of the child because the child is not a proper
37 subject for adoption and has no one willing to accept legal
38 guardianship. For purposes of this section, a recommendation by
39 the State Department of Social Services when it is acting as an
40 adoption agency in counties that are not served by a county

1 adoption agency or by a licensed county adoption agency that
2 adoption is not in the best interest of the child shall constitute a
3 compelling reason for the court's determination. That
4 recommendation shall be based on the present circumstances of
5 the child and may not preclude a different recommendation at a
6 later date if the child's circumstances change.

7 If the court orders that a child who is 10 years of age or older
8 remain in long-term foster care, the court shall determine
9 whether the agency has made reasonable efforts to maintain the
10 child's relationships with individuals other than the child's
11 siblings who are important to the child, consistent with the
12 child's best interests, and may make any appropriate order to
13 ensure that those relationships are maintained.

14 (h) In any case in which the court orders that a hearing
15 pursuant to Section 366.26 shall be held, it shall also order the
16 termination of reunification services to the parent or legal
17 guardian. The court shall continue to permit the parent or legal
18 guardian to visit the child pending the hearing unless it finds that
19 visitation would be detrimental to the child. The court shall make
20 any other appropriate orders to enable the child to maintain
21 relationships with individuals, other than the child's siblings,
22 who are important to the child, consistent with the child's best
23 interests.

24 (i) Whenever a court orders that a hearing pursuant to Section
25 366.26 shall be held, it shall direct the agency supervising the
26 child and the licensed county adoption agency, or the State
27 Department of Social Services when it is acting as an adoption
28 agency in counties that are not served by a county adoption
29 agency, to prepare an assessment that shall include:

30 (1) Current search efforts for an absent parent or parents or
31 legal guardians.

32 (2) A review of the amount of and nature of any contact
33 between the child and his or her parents or legal guardians and
34 other members of his or her extended family since the time of
35 placement. Although the extended family of each child shall be
36 reviewed on a case-by-case basis, "extended family" for the
37 purpose of this paragraph shall include, but not be limited to, the
38 child's siblings, grandparents, aunts, and uncles.

39 (3) An evaluation of the child's medical, developmental,
40 scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or legal guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child to any identified prospective adoptive parent or legal guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) A description of efforts to be made to identify a prospective adoptive parent or legal guardian, including, but not limited to, child-specific recruitment and listing on an adoption exchange.

(7) An analysis of the likelihood that the child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, and juvenile court dependency is subsequently dismissed, the relative shall be eligible for aid under the Kin-GAP program or the Kin-GAP Plus program, as provided for in Article 4.5 (commencing with Section 11360) and Article 4.75 (commencing with Section 11380) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

1 (l) For purposes of this section, evidence of any of the
2 following circumstances may not, in and of itself, be deemed a
3 failure to provide or offer reasonable services:

4 (1) The child has been placed with a foster family that is
5 eligible to adopt a child, or has been placed in a preadoptive
6 home.

7 (2) The case plan includes services to make and finalize a
8 permanent placement for the child if efforts to reunify fail.

9 (3) Services to make and finalize a permanent placement for
10 the child, if efforts to reunify fail, are provided concurrently with
11 services to reunify the family.

12 (m) The implementation and operation of the amendments to
13 subdivisions (c) and (g) enacted at the 2005–06 Regular Session
14 shall be subject to appropriation through the budget process and
15 by phase, as provided in Section 366.35.

16 SEC. 3. If the Commission on State Mandates determines that
17 this act contains costs mandated by the state, reimbursement to
18 local agencies and school districts for those costs shall be made
19 pursuant to Part 7 (commencing with Section 17500) of Division
20 4 of Title 2 of the Government Code.

21 SEC. 4. (a) Section 1.5 of this bill incorporates amendments
22 to Section 295 of the Welfare and Institutions Code proposed by
23 this bill and SB 678. It shall only become operative if (1) both
24 bills are enacted and become effective on or before January 1,
25 2007, (2) each bill amends Section 295 of the Welfare and
26 Institutions Code, and (3) this bill is enacted after SB 678, in
27 which case Section 295 of the Welfare and Institutions Code, as
28 amended by SB 678, shall remain operative only until the
29 operative date of this bill, at which time Section 1.5 of this bill
30 shall become operative, and Section 1 of this bill shall not
31 become operative.

32 (b) Section 2.5 of this bill incorporates amendments to Section
33 366.21 of the Welfare and Institutions Code proposed by this bill
34 and AB 1774. It shall only become operative if (1) both bills are
35 enacted and become effective on or before January 1, 2007, (2)
36 each bill amends Section 366.21 of the Welfare and Institutions
37 Code, and (3) this bill is enacted after AB 1774, in which case
38 Section 366.21 of the Welfare and Institutions Code, as amended
39 by AB 1774, shall remain operative only until the operative date

- 1 *of this bill, at which time Section 2.5 of this bill shall become*
- 2 *operative, and Section 2 of this bill shall not become operative.*

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